IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT

JODHPUR

JUDGMENT

JAGDISH KUMAR & ANR.VS RAMDEO CHUGH& OTHERS

S.B.CIVIL MISC. APPEAL NO.758/2006
UNDER ORDER 43 RULE 1 CPC AGAINST THE ORDER DATED 4.1.2006 PASSED BY DISTRICT JUDG,SRI GANGANGAR IN CIVIL MISC.CASE NO.67/05 & 19/06.

Date of Judgment :- 13.12.2006

Present

HON'BLE MR.JUSTICE PRAKASH TATIA

Mr.R.K.Thanvi, counsel for the appellants.
Mr.Sanjeet Purohit)
Mr.Yashwant Mehta)
Mr.Vikas Balia)counsel for the respondents.

BY THE COURT :-

Heard learned counsel for the parties.

The appellants are aggrieved against the order of the trial Court dated 20th March 2006 by which the trial Court dismissed the appellants defendants application filed under Order 39 Rule 4 C.P.C.

The appellants defendants total prayer presently is that appellants want to carry out only repair works and finishing in property in dispute. However, in the original application filed under Order 39 Rule 4 C.P.C. Prayer was for reconstruction of the building for beneficial enjoyment of the property by the appellants.

Learned counsel for the respondents submit that the appellants are guilty of violating injunction order and they tried to make additions, alterations in the property in dispute. The respondents also submitted an application under Order 39 Rule 7 CPC before the Court below and raised grievance against the appellants because of his conduct. It is also submitted that since the appellants sought permission to raise construction in their application under Order 39 Rule 4 CPC the trial Court was fully justified in denying the said relief.

I considered the submissions of the learned counsel for the parties. It will be worthwhile to mention here that the trial Court allowed the injunction application of the plaintiff by ordering that property in dispute shall not be alienated and there will be no alteration in the suit property and status quo be maintained. It appears from the relief claimed by the plaintiff in his application for grant of injunction as well as the order passed by the trial Court on his application, the trial Court granted injunction only so as the defendants appellants may not make any additions, alterations in the suit premises, therefore, the order of maintaining status quo is required to be read in the context in which it was passed. It is not in dispute that the appellants are in possession of the suit property and in view of the injunction order, the appellant cannot make any additions or alterations in the suit premises and bound to preserve the property but so far as their right to enjoy of the property by keeping it in good conditions, it can not effect respondents and can not cause any injury to the

plaintiffs respondents. However the enjoyment of the property by the person in possession when there is litigation may not include making additions, alterations in the property but he can enjoy the property. In view of the above confinement of relief by the appellants the order of the trial Court dated 22nd March 2006 is set aside. The appellants may make necessary repairing works as well as only finishing work in the suit property and before that the trial Court may appoint a commissioner who may submit report with respect to the exact position of the suit property and the appellants shall not make additions, alteration in the suit property.

The appeal is allowed, accordingly. The commissioner may also take photographs and submit in Court and commissioner's fees which may be determined by the Court, shall be paid by the appellants.

(PRAKASH TATIA)J.

CKThanvi